

REMARKS

Reconsideration of the above-mentioned application is respectfully requested. A declaration of a co-inventor, Mr. John Lown, in support of the patentability of the claimed invention is submitted herewith for consideration by the Examiner.

Original claims 1-19 and 26-29 were rejected under 35 USC §112 on the grounds that an outwardly tapering cover sealing flange (claim 1) and such an outwardly tapering sealing fin along with an outwardly container inner sealing surface (claim 26) are not supported by the specification. This rejection as to claim 1 is respectfully traversed. Fig. 26 of the drawings and the specification at page 7, lines 7-10 and page 10, lines 2-8 clearly point out that the cover sealing flange can taper outwardly.

Dependent claims 2, 9 and 10 have been cancelled. Claims 26 and 27 have been amended to only call for the container sealing surface to taper outwardly and such construction is shown in Fig. 4. Claims 1, 3-8, 11-19 and claims 26-29 are now definite and in full compliance with 35 USC §112.

Claims 1, 2, 8, 11, 26 and 30 were rejected as anticipated by or obvious over the de Vries reference on the grounds that the reference discloses a lid 40 with an outwardly tapering fin and a container with a circumscribing wall 2 having an inner surface. According to the Office Action the fin seats against the inner surface of the container wall to establish a tight seal. The Office Action does not identify the de Vries "so called" outwardly tapering fin, the inner surface of the container wall against which the fin seats or how this unidentified fin forms the seal or where this function is taught in the reference.

An invention is anticipated only if the same device, including each of the claimed elements and all of the claimed limitations, are shown in a single reference. *Richardson v. Suzuki Motors Co.* 9 USPQ2d 1913, 1920 (Fed. Cir. 1989).

Amended claim 1 calls for a container to have a peripheral wall with the upper portion defining an inside sealing surface and a cover having an outer rim flange and a downwardly extending sealing flange circumscribing the cover inwardly of the outer rim flange with the inner sealing flange tapering outwardly so that when the cover is pressed downwardly the flange free edge is forced inwardly to provide an interference fit with the container wall sealing surface, said interference fit providing the only seal between the cover and container.

Initially, it is pointed out that the de Vries container is designed for an entirely different use than applicants. (Lown Decl. ¶8) As was pointed out in the Preliminary Amendment the de Vries lid has a peripheral edge 44 with an inside resilient lip (apparently identified as 50) which is pressed against the downwardly angled rim 52 of the top edge 8 by the clamps which hook over the top edge. See de Vries at 3:50-54. This general type of seal is found in many containers. In contrast, applicants' novel container/cover relies on a flexible sealing flange which slides along and forms an interference fit with the inner wall of the container to provide the seal. The outside angled rim 52 of de Vries cannot be equated to a container inside sealing surface. De Vries does not disclose a container, the upper portion of which defines an inside sealing surface. This element is missing.

In addition, de Vries does not disclose a cover/lid with an outwardly (and downwardly) extending sealing flange circumscribing the cover inwardly of outer rim flange i.e., edge 44.

To the extent that the de Vries cover has a downwardly extending portion circumscribing the

cover inwardly of the outer rim flange 44 it would have to be the triangular protuberance unidentified in Fig. 8¹, but marked A by the undersigned in the reproduction of Fig. 8 below:

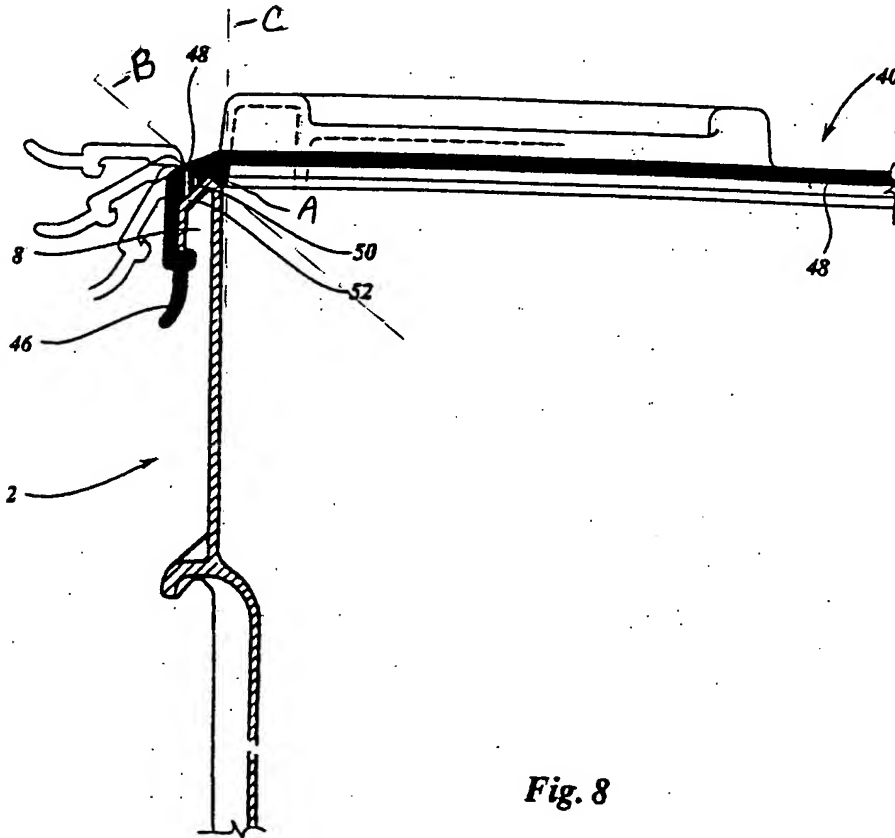


Fig. 8

As was pointed out in the preliminary amendment, the protuberance A is not tapered outwardly. The outer surface of the protuberance, coincident with the dashed lines, marked B on the above figure, tapers inwardly and the inner surface, marked C, appears to be vertical. Taking a centerline between the surfaces results in an inward taper. Thus, de Vries does not disclose a cover having downwardly extending sealing flange circumscribing the cover inwardly of the outer rim

¹It is noted that the upper edge of the container shown in Fig. 8 is not in agreement with the enlarged view of the upper edge shown in Fig. 4.

flange with the sealing flange tapering outwardly. This structure/limitation is missing from the reference. While the protuberance A is shown in apparent contact with a slanted surface at the top of container (the surface is marked D on the upper portion of Fig. 4, reproduced below) there is no teaching or suggestion that the protuberance A and surface D form an interference fit or indeed perform any part of the sealing function.

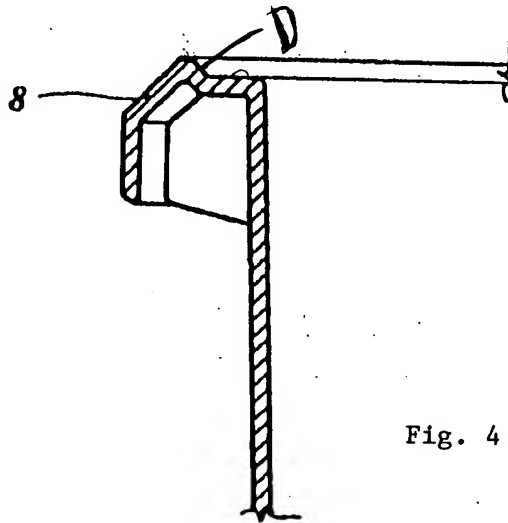


Fig. 4

Clearly the provision of a seal between the protuberance A (even if it could be considered to be canted outwardly which it cannot) and the inner wall of the container is not necessarily present or inherent in the de Vries reference and therefore the claimed sealing feature is not inherent in the de Vries reference. *Continental Can Company USA Inc. v. Monsanto Co.* 20 USPQ2d 1746, 1749 (Fed. Cir. 1991)

Last, the claimed limitation that the outwardly extending cover sealing fin and the container inside sealing surface provide the only seal between the cover and container is not only missing from de Vries but indeed de Vries teaches away from this construction.

Amended claim 1 is not anticipated by de Vries.

With respect to the obvious issue, the differences between the de Vries structure and applicants' claimed invention are significant and these differences are the key to its commercial success. (Lown Decl. ¶¶ 8, 11) The de Vries reference provides no teaching, suggestion or incentive for one of ordinary skill in the art to discard the sealing arrangement created by compressing the resilient lip 50 (on the cover) against the outside angled rim 50 (on the container) and add a sealing flange to the cover which extends inwardly of the peripheral edge 44 which flange tapers outwardly to form an interference fit with an inside sealing surface on the container wall with that interference fit providing the only seal.

Applicants' invention has solved a real world problem as attested to by the outstanding commercial success of the invention.

See *In re Deminski*, 230 USPQ 313, 315 (Fed. Cir. 1986) where the court in reversing the Board of Appeals as to the patentability of certain claims noted:

We reverse the board's decision insofar as it affirms the examiner's rejection of claims 17, 18, and 21. The latter claims have the limitation that the valve sets in each valve chamber be connected in a way which will permit them to be withdrawn as a unit. There is nothing in the prior art references, wither singly or in combination, 'to suggest the desirability, and thus the obviousness,' of designing the valve assembly so that it can be removed as a unit.

. . .

. . . Pocock does not address Deminski's problem of how to remove a large and heavy valve assembly as a unit. Instead, Pocock teaches away from the invention of claim s 17, 18, and 21 of Deminski's patent application.

There was no suggestion in the prior art to provide Deminski with the motivation to design the valve assembly so that it would be removable as a unit. The board argues that if Pocock had followed the 'common practice' of attaching the valve stem to the valve structure, then the valve assembly would be removable as a unit. The only way the board could have arrived at its conclusion was through hindsight analysis by reading into the art Deminski's own teachings. Hindsight analysis is clearly improper, since the statutory test is whether 'the subject matter as a whole would have been obvious at the time the invention was made.'

Applicants' invention and particularly any obvious rejection must be viewed in the real world. *Panduit Corp. v. Dennison Manufacturing Co.* 227 USPQ 337, 348 (Fed. Cir. 1985).

See *Continental Can Co*, supra, at 1752, where the court in reversing a summary judgment of invalidity stated:

The district court concluded that the structure in suit is simply a variation on known themes. It is in such circumstance that the objective indicia - the so-called secondary considerations - are most useful to the decision-maker. The significance of a new structure is often better measure din the market place than in the courtroom.

Thus when differences that may appear technologically minor nonetheless have a practical impact, particularly in a crowded field, the decision-maker must

consider the obviousness of the new structure in this light. Such objective indicia as commercial success, or filling an existing need, illuminate the technological and commercial environment of the inventor, and aid in understanding the state of the art at the time the invention was made.

Claim 1 is clearly patentable over de Vries.

Dependent claims 3-8 and 11-12 were rejected as obvious over the reference. Claims 12-19 were indicated to be allowable if rewritten in independent form. These claims contain additional limitations which are not taught or suggested in the de Vries reference. For example, claims 3-6 define the angle for the outwardly tapering cover sealing flange. Claims 6 and 7 call for a lead in surface on the container wall to aid in guiding the sealing flange into the container sealing surface. This structure is missing from the reference. Claim 8 calls for the spaced stop members to prevent the under surface of the cover from abutting the upper edge of the container. Claim 11 calls for certain resiliency strength characteristics which are not disclosed or suggested by DeVries.

Claims 3-8 and 11-19 are patentable over the reference.

Claims 20-25 stand allowed.

Claim 26, as amended, does not require that the cover sealing fin taper outwardly but does require the container sealing surface to taper outwardly with (1) the cover fin applying horizontal pressure to the container sealing surface in the closed position to establish a seal between the wall and the fin and (2) the interface between the fin and the container sealing surface to provide the only seal between the cover and container.

As discussed earlier there is no teaching or suggestion that the protuberance A on the de

Vries cover forms a seal with any part of the container wall and even if one assumes (without foundation) that some sort of seal is provided between such protuberance and the inside of the container wall it unequivocally would not be the only seal. Claim 26 is neither anticipated nor rendered obvious by de Vries. Claim 26 is patentable.

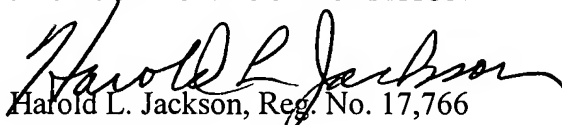
Dependent claims 27-29 add additional limitations to claim 26. For instance, claim 27 calls for container inner sealing surface to taper outwardly at an angle of about 2° to 5°. No such container inside sealing surface is taught or suggested in the reference. Claims 27-29 are patentable.

Claim 30 calls for the lid sealing fin to taper outwardly at an angle of about 4° to 8° with the interference fit between the container sealing area providing the only seal between the cover and container. Claims 30-32 are patentable over de Vries for the reasons advanced with respect to claim 1. In addition, there is nothing in de Vries that even remotely suggests the above angle limitations.

This application is now in condition for allowance and such action is courteously solicited. If applicants' attorney can be of any further assistance please call the undersigned at the number provided.

Respectfully submitted,

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I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Commissioner of Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on July 18, 2005.


July 18, 2005
Harold L. Jackson